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Deputy Executive Director, Policy

*Andrew B. Fremier*  
Deputy Executive Director, Operations

January 13, 2010

## REQUEST FOR PROPOSAL (RFP)

### *AC Transit Financial Review*

### Letter of Invitation

Dear Consultant:

The Metropolitan Transportation Commission (MTC) invites your firm to submit a proposal to provide financial and management consulting services to support a comprehensive financial review of the Alameda-Contra Costa Transit District (AC Transit). The financial review will consider cost control and revenue enhancement strategies to support AC Transit's long-term financial viability. This review, while sponsored by MTC, will be conducted in full consultation and partnership with AC Transit.

This letter, together with its enclosures, comprises the Request for Proposal (RFP) for the AC Transit Financial Review project. You may download a copy of the RFP from MTC's website at <http://www.mtc.ca.gov/jobs/>. Responses should be submitted in accordance with the instructions set forth in this RFP.

### Proposal Due Date

Interested firms must submit one (1) original and six (6) copies, as well as one electronic PDF and Word/Excel versions, of their proposal by 4:00 pm, Friday, January 29, 2010. ***Proposals received after that date and time will not be considered.*** Proposals shall be considered firm offers to provide the services described for a period of ninety (90) days from the time of submittal.

### MTC Point of Contact

Carolyn Clevenger will be MTC's Project Manager and point of contact for this contract. Proposals and all inquiries relating to this RFP shall be submitted to Carolyn Clevenger, Project Manager, at the address shown below. For telephone inquiries, call (510) 817-5736. E-mail inquiries may be directed to [cclevenger@mtc.ca.gov](mailto:cclevenger@mtc.ca.gov).

Carolyn Clevenger  
Metropolitan Transportation Commission  
Joseph P. Bort MetroCenter  
101 Eighth Street  
Oakland, CA 94607-4700

## Background

The Metropolitan Transportation Commission (MTC) is the transportation planning and funding agency for the nine-county San Francisco Bay Area. MTC is responsible for programming federal Congestion Mitigation and Air Quality Improvement (CMAQ) funds for the region. In November 2009, the AC Transit Board requested the redirection of capital revenues, including CMAQ funds, to implement CMAQ-eligible AC Transit bus services. This request was in response to AC Transit budget shortfalls and aimed at minimizing service cuts.

AC Transit is facing significant budget challenges due to the loss of State Transit Assistance funding and a steep decline in sales tax revenues. In June 2009, the AC Transit Board of Directors (Board) declared a Fiscal Emergency. Deep cuts, amounting to approximately 15 percent of current service, have been considered by the Board, and staff is evaluating multiple ways to contain costs.

On November 18, 2009, the AC Transit Board adopted *Resolution No. 09-060*<sup>1</sup>, requesting that MTC reassign \$35 million in CMAQ funds from the AC Transit Berkeley/Oakland/San Leandro Bus Rapid Transit project to implement restructured AC Transit operating services. Although today's economic climate is particularly challenging to transit operators, since 1990 AC Transit has requested other similar redirections of funds, suggesting a more fundamental and long-term challenge to AC Transit's ability to sustain its transit system that must be addressed. As part of *Resolution No. 09-060*, the AC Transit Board agreed to an independent comprehensive agency financial review.

On December 16, 2009, MTC adopted *Resolution 3831*, approving the reassignment of funds subject to the following conditions<sup>2</sup>: (1) that AC Transit agrees to an independent comprehensive agency financial review; (2) that AC Transit agrees to an independent comprehensive subregional analysis of service effectiveness as part of the Transit Sustainability Project; and (3) that AC Transit will meet the eligibility requirements for CMAQ funding for the proposed operating expenses to the satisfaction of the Federal Transit Administration (FTA).

This RFP is seeking Consultant assistance for the independent comprehensive financial review of AC Transit. The Consultant selected for this contract will in no way be precluded from bidding on the Request for Qualifications for the Transit Sustainability Project to be issued separately by MTC.

## Minimum Qualification

MTC seeks team and individual expertise and experience providing relevant financial and management consulting services in the area of transit delivery. To be eligible for proposal evaluation, a proposer must have a Project Manager who has played a similar role in a minimum of two (2) projects substantially similar to the services requested by MTC in this RFP (see

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<sup>1</sup> AC Transit *Resolution No. 09-060* can be found at:  
<http://www2.actransit.org/aboutac/bod/memos/ced363.pdf>

<sup>2</sup> MTC *Resolution 3831* can be found at:  
[http://apps.mtc.ca.gov/meeting\\_packet\\_documents/agenda\\_1403/3c\\_tmp-3831.pdf](http://apps.mtc.ca.gov/meeting_packet_documents/agenda_1403/3c_tmp-3831.pdf)

*Appendix A, Preliminary Scope of Work*) in the last five (5) years. Proposers may be required to verify these qualifications prior to the award of contract.

Other Qualifications:

The following areas of expertise are also necessary and will form the basis of evaluating a consultant's experience and qualifications:

- Familiarity with transit operations and cost structures, including understanding of transit agency budgeting, transit financial management, cost factors, and transit agency administration and management;
- Familiarity with public transit institutional structures, business and management practices and strategic planning; and
- Superior oral and written communications skills.

**Disadvantaged Business Enterprise Participation**

Effective June 2, 2009, the California Department of Transportation (Caltrans) requires recipients of DOT grant funds through Caltrans to impose the following DBE utilization requirements on its consultants and contractors. CONSULTANT's DBE participation on this Agreement will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

MTC has established a Underutilized Disadvantaged Business Enterprise (UDBE) contract goal of 7% for contracts entered into as a result of this RFP. Respondents are required to document their activities in the solicitation and selection of subconsultants on *Appendices E-3, E-4, and E-5*, the Local Agency Proposer UDBE Information (Consultant Contracts), Local Agency Proposer DBE Information (Consultant Contracts), and UDBE Information-Good Faith Efforts respectively. A report on the Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontracts must be included with all invoices. MTC may withhold payment pending receipt of such report. For the complete DBE participation provisions applicable to this procurement, see *Section VI.H* of the RFP and *Appendix E*.

**Scope of Work, Budget and Schedule**

A preliminary scope of work illustrating the type of tasks associated with this consulting effort is included in this RFP as *Appendix A, Preliminary Scope of Work*. MTC has budgeted approximately one hundred fifty thousand dollars (\$150,000) to pay for work detailed in *Appendix A*.

Consultant shall complete the work from the resulting contract by August 31, 2010. At MTC's sole option, the contract may be extended for additional work related to the AC Transit Financial Review as outlined in *Appendix A*.

**Proposers' Conference, Addenda, Requests for Clarification or Exceptions**

A proposers' conference will be held on Thursday January 21, 2010 at 3:00 p.m. at the Joseph P. Bort MetroCenter Building, 101 8<sup>th</sup> Street, 3<sup>rd</sup> Floor, Oakland, in the Claremont Conference Room.

Any addenda will be posted on MTC's website. All potential bidders are responsible for checking the website for any addenda to the bid documents.

Any requests for clarification of or exceptions to RFP requirements must be received by MTC no later than 12:00 p.m. on Friday, January 22, 2010 to guarantee response or consideration.

### **Proposal Evaluation**

Proposals will be evaluated in accordance with the evaluation criteria listed in *Section V* of this RFP. Interviews, if held, will occur on February 8, 2010.

MTC reserves the right to accept or reject any or all proposals submitted, waive minor irregularities in proposals, request additional information or revisions to offers, and to negotiate with any or all proposers. Any contract award will be to the firm that presents the proposal that, in the opinion of MTC, is the most advantageous to MTC, based on the evaluation criteria in *Section V*.

### **Consultant Selection Timetable**

3:00 p.m., Thursday, January 21, 2010	Proposers' Conference at 101 Eighth Street, 3 <sup>rd</sup> floor Oakland, CA 94607 Claremont Conference Room
12:00 p.m., Friday, January 22, 2010	Closing date/time for receipt of requests for clarification/exceptions
No later than three (3) working days prior to the date proposals are due	Closing date for receipt of objections to RFP provisions
<b>4:00 pm, Friday, January 29, 2010</b>	<b>Closing date/time for receipt of proposals</b>
Monday, February 8, 2010	Interviews (if held)
Wednesday, February 10, 2010	MTC Administration Committee Approval
Week of February 15, 2010 (approximate)	Execution of contract

### **General Conditions**

MTC will not reimburse any Consultant for costs related to preparing and submitting a proposal.

All materials submitted by proposers are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt. (See *Section VI.G* of RFP).

All materials submitted by proposers are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt. (See *Section VI.G* of RFP).

A synopsis of MTC's contract provisions is enclosed for your reference as *Appendix D*. If a proposer wishes to propose a change to any standard MTC contract provision, the provision and the proposed alternative language must be submitted prior to the closing date for receipt of requests for clarifications/exceptions listed above. If no such change is requested, the Consultant will be deemed to accept MTC's standard contract provisions, unless such language is protested in accordance with the procedures in *Section VI.F* of the RFP.

The selected Consultant will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix D-1*. Consultant agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix D-1, Insurance Requirements*, within five (5) days of MTC's notice to firm that it is the successful proposer. Requests to change MTC's insurance requirements should be submitted on or prior to the closing date for receipt of requests for clarifications/exceptions listed above. MTC will review the requests and issue an addendum if material changes requested by a prospective proposer are acceptable. Objections to MTC determinations on requests to change insurance requirements must be brought to MTC's attention no later than the date for protesting RFP provisions listed above. If such objections are not brought to MTC's attention consistent with the protest provisions of this RFP, compliance with all material insurance requirements will be assumed.

As this project is funded, in part, with FTA funds, the resulting contract will be subject to the federally required provisions included in *Appendix E - Department of Transportation Requirements*.

#### **Authority to Commit MTC**

Based on an evaluation conducted by an evaluation panel, the Executive Director will recommend an AC Transit Financial Review Consultant to the MTC Administration Committee, which will commit MTC to the expenditure of funds in connection with this RFP.

Thank you for your interest.

Sincerely,



Steve Heminger  
Executive Director

SH:CC

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REQUEST FOR PROPOSALS

to the

METROPOLITAN TRANSPORTATION COMMISSION

for

AC TRANSIT FINANCIAL REVIEW

January 13, 2010

Joseph P. Bort MetroCenter  
101 Eighth Street  
Oakland, CA 94607-4700

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## I. BACKGROUND AND PROJECT DESCRIPTION

### A. Background

The Metropolitan Transportation Commission (MTC) is the transportation planning and funding agency for the nine-county San Francisco Bay Area. MTC is responsible for programming federal Congestion Mitigation and Air Quality Improvement (CMAQ) funds for the region. In November 2009, the AC Transit Board requested the redirection of capital revenues, including CMAQ funds, to implement CMAQ-eligible AC Transit bus services. This request was in response to AC Transit budget shortfalls and aimed at minimizing service cuts.

AC Transit is facing significant budget challenges due to the loss of State Transit Assistance funding and a steep decline in sales tax revenues. In June 2009, the AC Transit Board of Directors (Board) declared a Fiscal Emergency. Deep cuts, amounting to approximately 15 percent of current service, have been considered by the Board, and staff is evaluating multiple ways to contain costs.

On November 18, 2009, the AC Transit Board adopted *Resolution No. 09-060*<sup>3</sup>, requesting that MTC reassign \$35 million in CMAQ funds from the AC Transit Berkeley/Oakland/San Leandro Bus Rapid Transit project to implement restructured AC Transit operating services. Although today's economic climate is particularly challenging to transit operators, since 1990 AC Transit has requested other similar redirections of funds, suggesting a more fundamental and long-term challenge to AC Transit's ability to sustain its transit system that must be addressed. As part of *Resolution No. 09-060*, the AC Transit Board agreed to an independent comprehensive agency financial review.

On December 16, 2009, MTC adopted *Resolution 3831*, approving the reassignment of funds subject to the following conditions<sup>4</sup>: (1) that AC Transit agrees to an independent comprehensive agency financial review; (2) that AC Transit agrees to an independent comprehensive subregional analysis of service effectiveness as part of the Transit Sustainability Project; and (3) that AC Transit will meet the eligibility requirements for CMAQ funding for the proposed operating expenses to the satisfaction of the Federal Transit Administration (FTA).

This RFP is seeking Consultant assistance for the independent comprehensive financial review of AC Transit. Consultants selected for this contract will in no way be precluded from bidding on the Request for Qualifications for the Transit Sustainability Project to be issued separately by MTC.

### B. Project Description and Objectives

The AC Transit Financial Review (the Review) will be a comprehensive financial review that considers cost control and revenue enhancement strategies sufficient to support AC Transit's

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<sup>3</sup> AC Transit *Resolution No. 09-060* can be found at:  
<http://www2.actransit.org/aboutac/bod/memos/ced363.pdf>

<sup>4</sup> MTC *Resolution 3831* can be found at:  
[http://apps.mtc.ca.gov/meeting\\_packet\\_documents/agenda\\_1403/3c\\_tmp-3831.pdf](http://apps.mtc.ca.gov/meeting_packet_documents/agenda_1403/3c_tmp-3831.pdf)

long-term financial viability. There is significant existing knowledge about the financial difficulties facing transit agencies generally. This Review is not meant to duplicate analysis already done by MTC and/or AC Transit, but is instead meant to supplement and advance the existing understanding of the current financial situation specific to AC Transit and identify strategies for AC Transit to move forward in a sustainable manner.

*Appendix A – Preliminary Scope of Work* illustrates the type of tasks associated with this effort and is included in this RFP as *Appendix A, Preliminary Scope of Work*.

## **II. PROPOSER QUALIFICATIONS AND REQUIREMENTS**

### **Minimum Qualification**

MTC seeks team and individual expertise and experience providing relevant financial and management consulting services in the area of transit delivery. To be eligible to submit a proposal, a proposer must have a Project Manager who has played a similar role in a minimum of two (2) projects substantially similar to the services requested by MTC in this RFP (see *Appendix A, Preliminary Scope of Work*) in the last five (5) years. Proposers may be required to verify these qualifications prior to the award of contract.

### Other Qualifications:

The following areas of expertise are also necessary and will form the basis of evaluating a consultant's experience and qualifications:

- Familiarity with transit operations and cost structures, including understanding of transit agency budgeting, transit financial management, cost factors, and transit agency administration and management;
- Familiarity with public transit institutional structures, business and management practices and strategic planning; and
- Superior oral and written communications skills.

## **III. SCOPE OF WORK, PERIOD OF PERFORMANCE, AND BUDGET**

### ***A. Scope of Work***

The preliminary scope of work for the project is provided in *Appendix A – Preliminary Scope of Work*. The selected Consultant will be expected to perform all work and analysis necessary to complete the scope of work.

***B. Period of Performance***

The period of performance for this contract will be through August 31, 2010. At MTC's sole option, this contract may be extended for additional work related to the AC Transit Financial Review as outlined in Appendix A.

***C. Budget***

MTC has budgeted approximately one hundred fifty thousand dollars (\$150,000) to pay for work as detailed under *Appendix A – Preliminary Scope of Work*. At MTC's sole discretion, additional resources may be identified and added to the contract through the amendment process to cover additional work within the RFP's scope.

***D. Personnel***

Key staff persons assigned to the project are expected to remain on the project through its completion. Any change in key staff persons identified in the contract is subject to the approval of the MTC Project Manager. Removal of any key staff persons identified in the contract without written consent of the MTC Project Manager may be considered a material breach of contract.

**IV. PROPOSAL FORM**

Proposers must submit one (1) original and six (6) hard copies and one electronic copy in pdf format of their proposal to MTC, at the address listed on page 2 of the letter of invitation, by 4:00 pm, Friday, January 29, 2010, to be considered. Proposal content and completeness are most important. Clarity is essential and will be considered in assessing the proposer's capabilities. Each proposal should include:

***A. Transmittal Letter***

Proposals must include a transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm and the name and telephone number of a contact person, if different from the signator.

***B. Title Page***

Proposals must include a title page that includes the RFP subject, the name of the proposer's firm, local address, telephone number, name of contact person, the contact person's email address and/or telephone number, and the date.

***C. Table of Contents***

Proposals must include a table of contents that includes a clear identification of the material by section and page number.

#### ***D. Overview and Summary***

This section should clearly convey the Consultant's understanding of the nature of the work and the general approach to be taken. It should include, but not be limited to, the following:

- Discussion of the purpose of the project; and
- A summary of the proposed approach.

#### ***E. Detailed Work Plan***

1. Discuss how the Consultant will conduct each task of the project, identify deliverables, and propose a preliminary schedule. The discussion shall be in sufficient detail to demonstrate a clear understanding of the project. For each task, proposers should expand on MTC's task description to provide more detail on how work will actually be performed and identify any important considerations not addressed. The selected Consultant, in consultation with MTC staff, will develop a final work plan and schedule.
2. Provide a staffing plan for each task and subtask of the work. Provide an organizational chart that shows roles and responsibilities of key personnel and communication relationships between MTC, consultant staff, and subcontractors, if any.

#### ***F. Qualifications and References***

1. Describe proposed team's qualifications specific to the requirements set forth in *Section II, Proposer Qualifications and Requirements*. Identify the personnel, including subcontractors' personnel, whose expertise or experience addresses each of the specified needs. Proposers are welcome to identify and provide examples of any other qualifications they feel are critical to the successful completion of the *Scope of Work*.
2. Identify key personnel (including subcontractor personnel) and briefly discuss individual qualifications to perform each task. Each key personnel resume should not exceed two pages.
3. Provide a succinct description (one page maximum per project) of any previous projects similar to the services requested in *Appendix A, Scope of Work*, indicating the project title, duration, budget, sponsoring agency and sponsor project manager, and roles played by individuals proposed for this study. Include the name of the agency for whom the work was performed, year performed, name of the contact person and their telephone number.
4. Provide at least one sample of a written technical report or memo prepared by key members of the consultant team, identifying the authors. Only one copy is required, and the sample will be returned after proposal evaluation, upon request.
5. Provide a list of references (including references for subcontractors) and their contact information.

6. Provide a summary of all contracts your firm (including subcontractors) has held with MTC in the past three years, including a brief description of the scope of work, the contract amount, and date of execution.

### ***G. Cost Proposal***

Provide a full description and breakdown of the expected expenditures of funds for each task contained in *Appendix A – Preliminary Scope of Work*. The budget should include, but is not limited to, a task budget and a line item budget with billing rates.

1. The task budget should present a breakdown of hours and expenses by task and deliverable for the project. It should identify or refer to key personnel or job descriptions in relation to each task to provide a full explanation of the resources committed to the project.
2. The line item budget should present a breakdown of costs by cost categories, including billing rates for key personnel and job classifications. The line item budget should be set forth on the *Cost and Price Analysis Form* attached hereto as *Appendix B* to this RFP. A line item budget should also be submitted for proposed sub-consultants with contracts estimated to exceed \$25,000. *Appendix B* is available in electronic spreadsheet format upon request.

### ***H. Conflict of Interest***

Provide a description of any related or similar work the proposer has performed or is performing that might present a conflict of interest with performing the work outlined in *Appendix A, Preliminary Scope of Work*.

#### ***I. Forms and Certificates***

1. A signed California Levine Act statement (*Appendix C*)
2. A signed Insurance Provisions document (*Appendix D-1*).
3. **Federally-required certifications** related to lobbying, debarment, and subcontractor information (*Appendices E-1, E-2, E-3, E4, and E-5*).

## **V. PROPOSAL EVALUATION**

### ***A. Verification of Minimum Qualifications***

The Project Manager will review proposals to ensure that each proposal meets the minimum qualifications set out in *Section II, Proposer Qualifications and Requirements* of this RFP. Proposers failing to meet the minimum qualifications **or to satisfy the Underutilized Disadvantaged Business Enterprise (UDBE) requirements in this RFQ** will not be considered.

### ***B. Review for General Responsiveness***

The Project Manager, in consultation with the MTC Office of General Counsel, will then conduct an initial review of the proposals for general responsiveness and inclusion of the items requested in *Section IV, Form of Proposal*. Any proposal that does not include enough information to permit the evaluators to rate the proposal in any one of the evaluation factors listed below will be considered non-responsive. A proposal that fails to include one or more items requested in *Section IV, Form of Proposal*, may be considered complete and generally responsive, if evaluation in every criterion is possible.

MTC reserves the right to accept or reject all proposals submitted, waive minor irregularities, request additional information, or revisions to offers, and negotiate with any or all proposers.

### ***C. Evaluation Criteria***

Responsive proposals will then be evaluated by a panel of MTC and AC Transit staff on the basis of the following evaluation factors, in order of relative importance:

1. Individual and team expertise and experience providing financial and management consulting services that demonstrates the proposers possess the qualifications needed to successfully carry out the project, as described in *Section II, Proposer Qualifications and Requirements*.
2. Approach to completing the project, including but not limited to: proposed approach to project tasks; project management plan; cost control ideas; insight on potential obstacles to Scope of Work completion; and approach to issue resolution.
3. Cost effectiveness, including hours and appropriateness of personnel assigned to each task; extent and sufficiency of commitment of key personnel; approach to and cost efficiency of required travel for non-local personnel; hourly rates; reasonableness of task budget.
4. Communication skills (as described in *Section II, Proposer Qualifications and Requirements*), based on proposal and interview, if held.

### ***D. Evaluation***

Following this evaluation, the panel may elect to recommend award to a particular proposal or develop a “short list” of proposers with a reasonable likelihood of being awarded the contract for interviews. References may be checked for one or more of such short-listed proposers prior to final evaluation.

### ***E. Recommendation for Award***

Following interviews of the short-listed firms (if held), the evaluation panel will conduct the final evaluation, based on the written proposals and oral interviews. The Project Manager will then recommend a Consultant to be forwarded to the Executive Director. If approved by the Executive Director, the recommendation will be presented to the MTC Administration Committee for approval.

MTC reserves the right not to convene interviews and to make an award on the basis of written proposals, alone. Further, MTC reserves the right to accept or reject any and all submitted proposals, to waive minor irregularities, and to request additional information from the proposers at any stage of the evaluation.

## **VI. GENERAL CONDITIONS**

### ***A. Limitations***

This Request For Proposal (RFP) does not commit the MTC to award a contract or to pay any costs incurred in the preparation of a proposal in response to this RFP.

### ***B. Award***

All finalists may be required to participate in negotiations and to submit such price, technical, or other revisions of their proposals as may result from negotiations. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and a technical viewpoint. Any award made will be to the Consultant whose proposal is most advantageous to MTC based on the evaluation criteria outlined above.

### ***C. Binding Offer***

A signed proposal submitted to MTC in response to this RFP shall constitute a binding offer from Consultant to contract with MTC according to the terms of the proposal for a period of ninety (90) days after its date of submission, which shall be the date proposals are due to MTC.

### ***D. Contract Arrangements***

The selected Consultant will be expected to execute a contract based on the terms and conditions in *Appendix D - Synopsis of MTC 's Standard Consultant Agreement*. Proposers who wish to review the full contract prior to proposal submission should request a copy from the MTC Project Manager. Particular attention should be paid to MTC 's insurance and indemnification requirements. Requests for modifications or exceptions to any provision of the appendices must be submitted in accordance with the schedule in the Letter of Invitation to guarantee consideration. Failure to submit proposed modifications by the deadline shall be deemed acceptance of the terms and conditions in the Standard Consultant Agreement.

### ***E. Contractor Payment Provisions***

The contract payment terms will be lump sum (firm fixed price) with payment made on the basis of receipt by MTC of satisfactory deliverables.

### ***F. Selection Disputes***

A proposer may object to a provision of the RFP on the grounds that it is arbitrary, biased, or unduly restrictive, or to the selection of a particular Consultant on the grounds that MTC procedures, the provisions of the RFP or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied by submitting to the Project Manager a written explanation of the basis for the protest:

- 1) No later than three (3) working days prior to the date proposals are due, for objections to RFP provisions;
- 2) No later than three (3) working days after the date on which the proposer is notified that it was found to be nonresponsive or has failed to meet the minimum qualifications; or
- 3) No later than three (3) working days after the date on which contract award is authorized by the Administration Committee or the date notified that it was not selected, whichever is later, for objections to Consultant selection.

Except with regard to initial determinations of non-responsiveness or failure to meet the minimum requirements, the evaluation record shall remain confidential until the MTC Administration Committee authorizes award.

Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for the MTC review officer to recommend a resolution to the Executive Director.

The Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Authorization to award a contract to a particular Contractor by MTC's Administration Committee shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the Executive Director.

Should the Proposer wish to appeal the decision of the Executive Director, it may file a written appeal with the MTC Administration Committee, no later than three (3) working days after receipt of the written response from the Executive Director. The Administration Committee's decision will be the final agency decision.

#### ***G. Public Records***

This RFP and any material submitted by a proposer in response to this RFP are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt by law. Proposals will remain confidential until the Administration Committee has authorized award.

#### ***H. Disadvantaged Business Enterprise (DBE) Requirement***

Effective June 2, 2009, the California Department of Transportation (Caltrans) requires recipients of DOT grant funds through Caltrans to impose the following DBE utilization requirements on its consultants and contractors. CONSULTANT's DBE participation on this Agreement will assist Caltrans in meeting its federally mandated statewide overall DBE goal.



MTC has established an Underutilized Disadvantaged Business Enterprise (UDBE) contract goal of 7% for this contract; the UDBE goal applies to all non-discretionary tasks. Respondents are required to document their activities in the solicitation and selection of subconsultants on *Appendices E-3, E-4, and E-5*, the Local Agency Proposer UDBE Information (Consultant Contracts), Local Agency Proposer DBE Information (Consultant Contracts), and UDBE Information-Good Faith Efforts respectively. A report on the Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontracts must be included with all invoices. MTC may withhold payment pending receipt of such report. For the complete DBE participation provisions applicable to this procurement, see *Appendix E*.

Appendices E-1, E-2, E-3, E-4, and E-5 are Caltrans-required forms. Proposers ***must*** complete Appendices E-1, E-2, E-3, E-4 and E-5 according to the instructions in their entirety. This applies even if a proposer is a UDBE/DBE.

## **1. TERMS AS USED IN THIS DOCUMENT:**

- The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term “Underutilized Disadvantaged Business Enterprise” or “UDBE” is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups:
  - Black American
  - Asian-Pacific American
  - Native American
  - Women
- The term “proposer” refers to firms submitting SOQs in response to this RFQ; the term “proposal” means the SOQ.
- The term “Contract.” also means Agreement.
- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

## **2. AUTHORITY AND RESPONSIBILITY**

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The consultant should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

### **3. SUBMISSION OF UDBE AND DBE INFORMATION**

If there is a UDBE goal on the contract, a “Local Agency Bidder/Proposer-UDBE (Consultant Contract) Commitment” (Exhibit 10-O(1)) form shall be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. Only UDBE participation will be counted towards the contract goal; however, all DBE participation shall be collected and reported.

A “Local Agency Proposer/Bidder-DBE (Consultant Contract)-Information” (Exhibit 10-O(2)) form shall be included with the Request for Proposal. The purpose of the form is to collect data required under 49 CFR 26. For contracts with UDBE goals, this form collects DBE participation by DBEs owned by Hispanic American and Subcontinent Asian Americans. For contracts with no goals, this form collects information on all DBEs, including UDBEs. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

### **4. DBE PARTICIPATION – GENERAL INFORMATION**

It is the proposer’s responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department’s DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A UDBE proposer, not submitting as a joint venture with a non-DBE, will be required to document one or a combination of the following:
  - 1. The proposer is a UDBE and will meet the goal by performing work with its own forces.
  - 2. The proposer will meet the goal through work performed by UDBE subcontractors, suppliers or trucking companies.
  - 3. The proposer, prior to bidding, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in

the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The prime contractor shall list only one subcontractor for each portion of work as defined in its proposal and all DBE subcontractors should be listed in the list of subcontractors.
- G. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

## 5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance. Proposer may call (916) 440-0539 for web or download assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <http://www.dot.ca.gov/hq/bep/>.
  - Click on the link in the left menu titled Find a Certified Firm
  - Click on Query Form link, located in the first sentence
  - Click on Certified DBE's (UCP) located on the first line in the center of the page
  - Click on Click To Access DBE Query Form
  - Searches can be performed by one or more criteria
  - Follow instructions on the screen
  - “Start Search,” “Civil Rights Home,” and “Caltrans Home” links are located at the bottom of the query form
- C. How to Obtain a List of Certified DBEs without Internet Access

**DBE Directory:** If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the on-line database. A copy of the directory of certified DBEs may be ordered from the Caltrans Division of Procurement and Contracts/Material and Distribution Branch/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

**6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS DBE CREDIT, AND IF A DBE IS ALSO A UDBE, PURCHASES WILL COUNT TOWARDS THE UDBE GOAL UNDER THE FOLLOWING CONDITIONS:**

- A. If the materials or supplies are obtained from a DBE manufacturer, count one hundred percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement-by -Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not UDBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

## APPENDIX A – PRELIMINARY SCOPE OF WORK

### AC TRANSIT FINANCIAL REVIEW

#### ***Background***

AC Transit is facing significant budget challenges due in part to the loss of State Transit Assistance funding and a steep decline in sales tax revenues. In addition to shrinking revenues, the costs of delivering service have increased – even adjusted for inflation – by nearly 70 percent since 1997, while revenue hours and passengers have only increased by 26 percent and 11 percent respectively.

In June 2009, the AC Transit Board of Directors (Board) declared a Fiscal Emergency. Deep cuts have been considered by the AC Transit Board as the agency evaluates multiple ways to contain costs. On November 18, 2009, the AC Transit Board adopted *Resolution No. 09-060*<sup>5</sup>, requesting that MTC reassign \$35 million in CMAQ funds from a capital project to restructured AC Transit operating services. This reassignment is meant to help reduce the amount of service cuts required to balance AC Transit's budget.

Although today's economic climate is particularly challenging to transit operators, since 1990 AC Transit has repeatedly requested MTC to authorize similar redirections of funds. This trend suggests a more fundamental and long-term challenge to AC Transit's ability to sustain its transit system that must be addressed. As part of *Resolution No. 09-060*, the AC Transit Board agreed to an independent comprehensive agency financial review.

On December 16, 2009, MTC adopted *Resolution 3831*, approving the reassignment of funds subject to the following conditions<sup>6</sup>: (1) that AC Transit agrees to an independent comprehensive agency financial review; (2) that AC Transit agrees to an independent comprehensive subregional analysis of service effectiveness as part of the Transit Sustainability Project; and (3) that AC Transit will meet the eligibility requirements for CMAQ funding for the proposed operating expenses to the satisfaction of the Federal Transit Administration (FTA).

The AC Transit Financial Review (the Review) will be a comprehensive financial review that considers cost control and revenue enhancement strategies sufficient to support AC Transit's long-term financial viability. There is significant existing knowledge about the financial difficulties facing transit agencies generally. This Review is not meant to duplicate analysis already done by MTC and/or AC Transit, but is instead meant to supplement and advance the existing understanding of the current financial situation specific to AC Transit and identify strategies for AC Transit to move forward in a sustainable manner.

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<sup>5</sup> AC Transit *Resolution No. 09-060* can be found at:  
<http://www2.actransit.org/aboutac/bod/memos/ced363.pdf>

<sup>6</sup> MTC *Resolution 3831* can be found at:  
[http://apps.mtc.ca.gov/meeting\\_packet\\_documents/agenda\\_1403/3c\\_tmp-3831.pdf](http://apps.mtc.ca.gov/meeting_packet_documents/agenda_1403/3c_tmp-3831.pdf)

The Review should build upon existing information and analysis conducted by MTC, AC Transit, and as part of the annual performance audits conducted by MTC. The goal of the Review is to advance the discussion and specific strategies that will benefit AC Transit's long-term financial stability, not to simply restate the difficult economic environment facing transit operators.

**MTC seeks a Consultant to:**

- Identify specific savings and revenue enhancements over immediate, 5 and 10-year timeframes to achieve a balanced budget.
- Review and more completely develop cost containment and organizational restructuring strategies identified by AC Transit as well as others that allow AC Transit to deliver a cost-effective service to the public.
- Recommend an implementation plan and policy options for advancing strategies recommended to support AC Transit's long-term financial viability.

Percentages assigned to each task below are initial estimates based on the anticipated level of effort required to perform each task and are intended to inform proposals and portray the relative importance of the various tasks. The levels of effort and budget distribution will be determined during *Task 1, Develop Final Work Scope and Schedule*.

The majority of work is anticipated to be completed in the first three (3) months of the contract.

**Task 1 – Develop Final Work Scope and Schedule**

- Finalize the project work scope and schedule, including detailed deliverables
- Finalize the project budget, including a clearly identified deliverable-based budget for each task

**Deliverables:**

- 1.1) Draft detailed work scope, schedule and task budget
- 1.2) Final work scope, schedule and task budget

**Task 2 – Evaluate AC Transit's five and ten-year budget projections (10%)**

- Assess the assumptions behind AC Transit's projected revenues and expenses to evaluate the risks in these assumptions
- Compare the assumptions made, including fare policies, to those of other similarly sized and focused bus operators in the region and nationally (primarily utilize existing reports for data)

**Deliverables:**

- 2.1) Draft Technical memo evaluating AC Transit's five and ten-year budget projections
- 2.2) Final Technical memo which addresses any comments made by MTC and AC Transit staff

**Task 3 – Evaluate AC Transit’s current operating budget (15%)**

- Evaluate current operating expenses and identify key cost drivers for AC Transit’s operating budget. Evaluate the impact of those cost drivers on the cost effectiveness and efficiency of AC Transit operations. Cost drivers might include but are not limited to:
  - administration,
  - operations and service delivery, including evaluation of work rules,
  - compensation, including analysis of overtime and unplanned and planned leave,
  - benefits, and
  - fleet and facility maintenance.
- Compare projected operating expenses to other operators, utilizing performance metrics identified by MTC to evaluate cost effectiveness and cost efficiency
- Identify potential new existing revenue sources that might be pursued by AC Transit
- Recommend target savings and revenue enhancement amounts
- Analyze procurement practices and identify any efficiencies that could be realized
- Assess the effect new capital programs and state and federal mandates have on the operating budget

Deliverables:

- 3.1) Draft Task 3 Report evaluating AC Transit’s current operating budget, including detailed analysis of operating expenses, current and potential revenue sources, capital programs and administrative practices impacting the budget
- 3.2) Final Task 3 Report which addresses any comments made by MTC and AC Transit staff

**Task 4 – Identify opportunities for cost containment (30%)**

- Review cost savings and efficiency strategies identified by AC Transit
  - Evaluate the potential cost savings and impact on existing or planned service
- Identify new operating and capital cost containment opportunities for the near-term, and 5 and 10 year timeframes
- Identify framework for implementing a multiyear policy for fare adjustments
- Identify administrative cost control strategies including initiatives such as the recent improvements to AC Transit’s financial management system and inter-department work flow
- Compare AC Transit’s organizational structure to other transit agencies of its size and identify measures that would improve overall cost performance

Deliverables:

- 4.1) Draft Task 4 Report identifying opportunities for cost containment, including analysis of multiyear fare policies, administrative cost control strategies and organizational structure as it relates to overall cost performance
- 4.2) Final Task 4 Report which addresses any comments made by MTC and AC Transit staff

**Task 5 – Recommend a prioritized set of implementation strategies (45%)**

- Develop a recommended implementation plan for the identified cost savings and revenue enhancement strategies, including a phasing and prioritization strategy. This strategic implementation plan should take into account the cost-effectiveness of various options,

including the likelihood of achieving the necessary buy-in from various stakeholders (AC Transit Board, labor unions, customers, etc) to implement.

- Assess the potential roadblocks to implementing the recommendations
- Recommend evaluation criteria to measure the success of implementing the strategies

Deliverables:

- 5.1) Draft Task 5 Memo recommending a prioritized set of implementation strategies and evaluation criteria
- 5.2) Final Task 5 Memo which addresses any comments made by MTC and AC Transit staff
- 5.3) Draft Final Project Report and Implementation Plan
- 5.4) Final Project Report and Implementation Plan which addresses any comments made by MTC and AC Transit staff

Meeting Requirements

Consultants will be expected to participate in regular project management meetings and conference calls throughout the course of the project. In addition, Consultants will be expected to present findings as requested to the governing boards of MTC and AC Transit. The number of formal presentations will be determined during *Task 1, Develop Final Work Scope and Schedule*.



## APPENDIX B - COST AND PRICE ANALYSIS FORM<sup>7</sup>

COST AND PRICE ANALYSIS - RESEARCH AND DEVELOPMENT CONTRACTS				
This form is to be used in lieu of FAA Form 3515 as provided under FAPR 2-16.260-2, it will be executed and submitted with proposals in response to "Requests for Proposals," for procurement of research and development services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.			PURCHASE REQUEST NUMBER	
NAME AND ADDRESS OF OFFERER		TITLE OF PROJECT		
DETAIL DESCRIPTION		ESTIMATED HOURS	RATE/HOUR	TOTAL ESTIMATED COST (Dollars)
1. DIRECT LABOR(Specify)				
TOTAL DIRECT LABOR				
2. BURDEN (Overhead-specify) Dept. or Cost Center	Burden Rate	X BASE	BURDEN (\$)	
TOTAL BURDEN				
3. DIRECT MATERIAL				
TOTAL MATERIAL				
4. SPECIAL TESTING (Including field work at Government installations)				
TOTAL SPECIAL TESTING				
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on reverse)				
6. TRAVEL (If direct charge)				
a. TRANSPORTATION				
b. PER DIEM OR SUBSISTENCE				
TOTAL TRAVEL				
7. CONSULTANTS (Identify - purpose - rate)				
TOTAL CONSULTANTS				
8. SUBCONTRACTORS (Specify in Exhibit A on reverse)				
9. OTHER DIRECT COSTS (Specify in Exhibit B on reverse - explain royalty costs, if any)				
10. TOTAL DIRECT COST AND BURDEN				
11. GENERAL AND ADMINISTRATIVE EXPENSE (Rate % of item nos.)				
12. TOTAL ESTIMATED COST				
13. FIXED FEE OR PROFIT (State basis for amount in proposal)				
14. TOTAL ESTIMATED COST AND FIXED FEE OR PROFIT				

<sup>7</sup> This document is available as an Excel spreadsheet by email upon request to Project Manager.

<b>15. OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION</b>				
<b>A. GOVERNMENT AUDIT PERFORMED</b>		<b>DATE OF AUDIT</b>	<b>ACCOUNTING PERIOD COVERED</b>	
<b>B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AUDIT</b>		<b>C. DO YOUR CONTRACTS PROVIDE NEGOTIATED OVERHEAD RATES? ( ) NO ( ) YES</b> <i>(IF YES, NAME AGENCY NEGOTIATING RATES)</i>		
<b>D. (If no Government rates have been established, furnish the following information)</b>				
<b>DEPARTMENT OR COST CENTER</b>	<b>RATE</b>	<b>TOTAL INDIRECT EXPENSE POOL</b>		<b>BASE FOR TOTAL</b>
<b>16. EXHIBIT A - SUBCONTRACT COSTS (If more space needed, use blank sheets, identify item number)</b>				
<b>NAME AND ADDRESS OF SUBCONTRACTOR(S)</b>	<b>SUBCONTRACTED WORK</b>	<b>SUBCONTRACT</b>		
		<b>TYPE</b>	<b>AMOUNT</b>	
<b>TOTAL</b>				
<b>17. EXHIBIT B - OTHER DIRECT COSTS (If more space needed, use blank sheets, identify item number)</b>				
<b>TOTAL</b>				
<b>CERTIFICATE</b>				
<p>The labor rates and the overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he __has, __has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he __has, __has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.</p> <p><i>For interpretation of the representation including the term "bona fide employee," see Code of Federal Regulations, Title 44, Part 150.</i></p>				
<b>NO. OF CONTRACTOR EMPLOYEES:</b> <input type="checkbox"/> 500 AND UNDER <input type="checkbox"/> OVER 500 <input type="checkbox"/> OVER 750 <input type="checkbox"/> OVER 1,000			<b>STATE INCORPORATED IN:</b> <div style="height: 60px;"></div>	
<b>DATE</b>		<b>SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF CONTRACTOR</b>		

### APPENDIX C - CALIFORNIA LEVINE ACT STATEMENT

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer, or received by the officer on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

MTC’s commissioners include:

Tom Azumbrado  
Tom Bates  
Dave Cortese  
Dean J. Chu  
Chris Daly  
Bill Dodd

Dorene M. Giacomini  
Federal D. Glover  
Scott Haggerty  
Anne W. Halsted  
Steve Kinsey  
Sue Lempert  
Jake Mackenzie

Jon Rubin  
Bijan Sartipi  
James P. Sperling  
Adrienne J. Tissier  
Amy Rein Worth  
Ken Yeager

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any MTC commissioner in the 12 months preceding the date of the issuance of this request for qualifications?

\_\_\_ YES \_\_\_ NO

If yes, please identify the commissioner: \_\_\_\_\_

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any MTC commissioners in the three months following the award of the contract?

\_\_\_ YES \_\_\_ NO

If yes, please identify the commissioner: \_\_\_\_\_

Answering yes to either of the two questions above does not preclude MTC from awarding a contract to your firm. It does, however, preclude the identified commissioner(s) from participating in the contract award process for this contract.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
(SIGNATURE OF AUTHORIZED OFFICIAL)

\_\_\_\_\_  
(TYPE OR WRITE APPROPRIATE NAME, TITLE)

\_\_\_\_\_  
(TYPE OR WRITE NAME OF COMPANY)

## **APPENDIX D - SYNOPSIS OF PROVISIONS IN MTC'S STANDARD CONSULTANT AGREEMENT**

The selected consultant will be required to sign MTC's standard consultant agreement, a copy of which standard agreement may be obtained from the Project Manager for this RFP. In order to provide bidders with an understanding of some of MTC's standard contract provisions, the following is a synopsis of the major requirements in our standard agreement for professional services. **THE ACTUAL LANGUAGE OF THE STANDARD CONSULTANT AGREEMENT SUPERSEDES THIS SYNOPSIS.**

Termination: MTC may, at any time, terminate the Agreement upon written notice to Consultant. Upon termination, MTC will reimburse the Consultant for its costs for incomplete deliverables up to the date of termination. Upon payment, MTC will be under no further obligation to the Consultant. If the Consultant fails to perform as specified in the agreement, MTC may terminate the agreement for default by written notice following a period of cure, and the Consultant is then entitled only to compensation for costs incurred for work products acceptable to MTC, less the costs to MTC of rebidding.

Insurance Requirement: See *Appendix D-1, Insurance Requirements*, attached hereto.

Independent Contractor: Consultant is an independent contractor and has no authority to contract or enter into any other agreement in the name of MTC. Consultant shall be fully responsible for all matters relating to payment of its employees including compliance with taxes.

Indemnification: Consultant agrees to defend, indemnify and hold MTC harmless from all claims, damages, liability, and expenses resulting from any negligent or otherwise wrongful act or omission of Consultant in connection with the agreement. Consultant agrees to defend any and all claims, lawsuits or other legal proceedings brought against MTC arising out of such negligent or wrongful acts or omissions. The Consultant shall pay the full cost of the defense and any resulting judgments.

Data Furnished by MTC: All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials ("MTC Data") made available to the Consultant by MTC for use by the Consultant in the performance of its services under this Agreement shall remain the property of MTC and shall be returned to MTC at the completion or termination of this Agreement. No license to such MTC Data, outside of the Scope of Work of the Project, is conferred or implied by the Consultant's use or possession of such MTC Data. Any updates, revisions, additions or enhancements to such MTC Data made by the Consultant in the context of the Project shall be the property of MTC.

Ownership of Work Product: All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials ("Work Product") written or produced by the Consultant under this Agreement and provided to MTC as a deliverable shall be the property of MTC. Consultant will be required to assign all rights in copyright to such Work Product to MTC.

Personnel and Level of Effort: Personnel assigned to this Project and the estimated number of hours to be supplied by each will be specified in an attachment to the Agreement. No substitution of personnel or substantial decrease of hours will be allowed without prior written approval of MTC.

Subcontracts: No subcontracting of any or all of the services to be provided by Consultant shall be allowed without prior written approval of MTC. MTC is under no obligation to any subcontractors.

Consultant's Records: Consultant shall keep complete and accurate books, records, accounts and any and all work products, materials, and other data relevant to its performance under this Agreement. All such records shall be available to MTC for inspection and auditing purposes. The records shall be retained by Consultant for a period of not less than four (4) years following the fiscal year of the last expenditure under this Agreement.

Prohibited Interest: No member, officer or employee of MTC can have any interest in this agreement or its proceeds and Consultant may not have any interest which conflicts with its performance under this Agreement.

Governing Law. The Agreement shall be governed by the laws of the State of California.

### APPENDIX D-1 - INSURANCE REQUIREMENTS

Minimum Insurance Coverages. CONSULTANT shall, at its own expense, obtain and maintain in effect at all times the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement, placed with insurers with a Best's rating of A-X or better.

Yes (✓)	<b>Please certify by checking the boxes at left that required coverages will be provided within five (5) days of MTC's notice to firm that it is the successful proposer.</b>
_____	<u>Workers' Compensation Insurance</u> in the amount required by the applicable laws, and Employer's Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per occurrence, and any and all other coverage of CONSULTANT's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation endorsement in favor of MTC. Such Workers Compensation & Employers Liability may be waived, if and only for as long as CONSULTANT is a sole proprietor with no employees.
_____	<u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of CONSULTANT and CONSULTANT's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Expense for Indemnitee's defense costs shall be outside of policy limits and such policy shall be issued on a Duty to Defend Primary Occurrence Form.  MTC, and its commissioners, officers, representatives, agents and employees are to be named as additional insureds. Such insurance as afforded by this endorsement shall be primary as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.
_____	<u>Business Automobile Insurance</u> for all automobiles owned, used or maintained by CONSULTANT and CONSULTANT's officers, agents and employees, including but not limited to owned, leased, non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence.
_____	<u>Umbrella Insurance</u> in the amount of \$5,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance.
_____	<u>Errors and Omissions Professional Liability Insurance</u> in an amount no less than \$2,000,000. If such policy is written on a "Claims-Made" (rather than an "occurrence") basis, CONSULTANT agrees to maintain continuous coverage in effect from the date of the commencement of services to at least three (3) years beyond the termination or completion of services or until expiration of any applicable statute of limitations, whichever is longer. The policy shall provide coverage for all work performed by the CONSULTANT and any work performed

	or conducted by any subcontractor/consultant working for or performing services on behalf of the CONSULTANT. No contract or agreement between the CONSULTANT and any subcontractor/consultant shall relieve the CONSULTANT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by the CONSULTANT and any subcontractor/consultant working on behalf of the CONSULTANT on the project.
_____	<u>Property Insurance</u> covering CONSULTANT'S own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), debris removal, and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" ("All Risk") that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC. If such insurance coverage has a deductible, the CONSULTANT shall also be liable for the deductible.

**By signing below, you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within five (5) days of MTC's notice to firm that it is the successful proposer.**

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

**NOTE: If you were unable to check "Yes" for any of the required minimum insurance coverages listed above, a request for exception to the appropriate insurance requirement(s) must be brought to MTC's attention no later than the date for protesting RFQ provisions. If such objections are not brought to MTC's attention consistent with the protest provisions of this RFQ, compliance with the insurance requirements will be assumed.**

## **APPENDIX E - DEPARTMENT OF TRANSPORTATION REQUIREMENTS**

1. Equal Employment Opportunity. Consultant shall not, on the grounds of race, color, sex, age, religion, national origin, ancestry, physical handicap, medical condition, or marital status either discriminate or permit discrimination against any employee or applicant for employment in any manner prohibited by Federal, State or local laws. In the event of Consultant non-compliance, MTC may cancel, terminate or suspend the Agreement in whole or in part. Consultant may also be declared ineligible for further contracts with MTC.

Consultant and its subcontractors shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant and its subcontractors shall post in conspicuous places, available to all employees and applicants for employment, a notice setting forth these provisions.

2. Disadvantaged Business Enterprise (DBE) and Small Business Enterprise Policy.
  - A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Proposers who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
  - B. If the contract has an under-utilized DBE (UDBE) goal, the Consultant must meet the UDBE goal by using UDBEs as subcontractor or document a good faith effort to meet the goal. If a UDBE subcontractor is unable to perform, the Consultant must make a good faith effort to replace him/her with another UDBE subcontractor if the goal is not otherwise met. A UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups:
    1. Black American
    2. Asian-Pacific American
    3. Native American
    4. Women
  - C. DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the **performance** of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.



- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

## 2.1 Prompt Payment of Funds Withheld to Subcontractors

MTC shall hold retainage from the prime Consultant and shall make prompt and regular incremental acceptances of portions, as determined by the agency, of the contract work, and pay retainage to the prime Consultant based on these acceptances. The prime Consultant, or subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR26.29) requires that any delay or postponement of payment over 30-days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime Consultant or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime Consultant or subcontractor in the event of a dispute involving late payment or nonpayment by the prime Consultant, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime Consultants and subcontractors.

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

## 2.2 DBE Records

- A. The Consultant shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime Consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors," CEM-2402F (Exhibit 17-F in Chapter 17 of the LAP), certified correct by the Consultant or the Consultant's authorized representative and shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Consultant when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors" is submitted to the Contract Manager.
- 1) Prior to the fifteenth of each month, the Consultant shall submit documentation to the MTC's Project Manager showing the amount paid to DBE trucking companies. The

Consultant shall also obtain and submit documentation to the Agency's Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Consultant may count only the fee or commission the DBE receives as a result of the lease arrangement.

2) The Consultant shall also submit to the MTC's Project Manager documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans Monthly DBE Trucking Verification, CEM-2404(F) form provided to the Consultant by the Agency's Contract Manager.

### 2.3 DBE Certification and De-certification Status

If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the Consultant in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Consultant in writing with the date of certification. Any changes should be reported to the Agency's Contract Manager within 30 days.

### 2.4 Materials or supplies purchased from DBEs will count towards DBE credit, and if a DBE is also a UDBE, purchases will count towards the UDBE goal under the following conditions:

- A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.

- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

## 2.5 Performance of DBE Consultants and Other DBE Subcontractors/Suppliers

- A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.
  - B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
  - C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.
- 3. Title VI of Civil Rights Act of 1964. Consultant agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and its implementing regulations in 49 CFR Part 21.
  - 4. Debarment. In contracts over \$25,000, Consultant is required to certify, prior to executing a contract, that neither it nor its principals have been debarred from certain federal transactions by any Federal agency and to require any subcontractors with subcontracts over \$25,000 to provide a similar certification. (A copy of the required certification is included with this Appendix.)
  - 5. Audit and Inspection of Records. Consultant shall permit the authorized representatives of DOT, Federal Transit Administration (FTA) or the Federal Highway Administration (FHWA, and the Comptroller General of the United States to inspect and audit all data and records of the Consultant relating to its performance under this Agreement from the date of this Agreement until three (3) years after the close out of the federal grant from which this Agreement is financed, or four (4) years after the fiscal year of the expenditure, whichever is

longer. This requirement must be passed along to subcontractors, excluding purchase orders not exceeding \$25,000.

6. Subcontractors

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the MTC and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to the MTC for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Consultant. The Consultant's obligation to pay its subcontractors is an independent obligation from the MTC's obligation to make payments to the Consultant.
- B. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
- C. Consultant shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Consultant by the MTC.
- D. Any substitution of subcontractors must be approved in writing by the MTC's Project Manager in advance of assigning work to a substitute subcontractor.

7. Federal Grant Requirements. Those laws, statutes, ordinances, rules, regulations and procedural requirements which are imposed on MTC as a recipient of federal funds are imposed on Consultant, including compliance with 49 CFR Part 18, FTA Circular 4220.1D and the current FTA Master Agreement, a copy of which is available through MTC.

8. Identification of Documents. All reports and other documents completed as part of this Agreement shall carry the following notation on the front cover or title page:

The preparation of this report has been financed in part by grants from the Federal Transit Administration, U.S. Department of Transportation. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation.

- 9. Rights in Data. The Federal Government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) the copyright in any work developed under this Agreement; and (b) any rights of copyright to which MTC or Consultant purchases ownership under this Agreement.
- 10. State Energy Conservation Plan. Consultant shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321 *et seq.*).

11. Clean Air and Water Pollution Act. Consultant agrees to comply with the applicable requirements of all standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7501 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
12. Restrictions on Lobbying. In agreements over \$100,000, Consultant is required to execute a certificate indicating that no federal funds will be used to lobby federal officials and to disclose lobbying activities financed with non-federal funds. (Certificate attached.)

**APPENDIX E-1 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND  
OTHER RESPONSIBILITY MATTERS**

(Third Party Contracts and Subcontracts over \$25,000)

**Instructions for Certification:**

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, MTC may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to MTC if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact MTC for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by MTC.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which does a prudent person in the ordinary course of business dealings normally possess.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, MTC may pursue available remedies including suspension and/or debarment.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION  
LOWER TIER COVERED TRANSACTION**

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its “principals” [as defined at 49 CFR Section 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

---

Date

---

(Signature of authorized official)

---

(Type/print name and title)



**APPENDIX E-2 - CERTIFICATION OF RESTRICTIONS ON LOBBYING**

I, \_\_\_\_\_ hereby certify on behalf of \_\_\_\_\_ that:  
(name and title of grantee official) (name of grantee)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2010.

By \_\_\_\_\_ (signature of authorized official)

\_\_\_\_\_  
(title of authorized official)

**APPENDIX E-3 - EXHIBIT 10-01 LOCAL AGENCY PROPOSER UDBE  
COMMITMENT (CONSULTANT CONTRACTS)**

**NOTE: PLEASE REFER TO INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM**

AGENCY: MTC LOCATION: 101 8<sup>th</sup> St., Oakland, CA 94607

PROJECT DESCRIPTION:	AC Transit Financial Review
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CONTRACT GOAL: \$

PROPOSAL DATE:

PROPOSER'S NAME:

[illegible]**For Local Agency to Complete:**

Local Agency Contract Number: \_\_\_\_\_

Federal Aid Project Number:

Federal Share:

Proposal Award Date:

Local Agency certifies that the UDBE certification(s) has been verified and all information is complete and accurate.

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Print Name	Signature	Date
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Local Agency Representative

Signature \_\_\_\_\_ Date \_\_\_\_\_

Date \_\_\_\_\_

(Area Code) Telephone Number: \_\_\_\_\_

### Total Claimed Participation

\$\_\_\_\_\_

%

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Signature of Proposer

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Date \_\_\_\_\_ (Area Code) Tel. No. \_\_\_\_\_

**For Caltrans Review:**

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Print Name
Signature
Date

Caltrans District Local Assistance Engineer

Local Agency Bidder - UDBE Commitment (Rev 3/09)

Distribution: (1) Copy – If this Proposer is successful fax or scan a copy to the Caltrans District Local Assistance Engineer (DLAE) within 15 days of award. Failure to send a copy to the DLAE within 15 days of award may result in de-obligation of funds for this project.  
(2) Original – Local agency files

**INSTRUCTIONS - LOCAL AGENCY PROPOSER- UDBE COMMITMENT  
(CONSULTANT CONTRACTS) (Revised 03/09)  
ALL PROPOSERS:**

**PLEASE NOTE: It is the proposer's responsibility to verify that the UDBE(s) falls into one of the following groups in order to count towards the UDBE contract goal: 1) Black American; 2) Asian-Pacific American; 3) Native American; 4) Women. This information shall be submitted with your proposal. Failure to submit the required UDBE commitment will be grounds for finding the proposal nonresponsive**

UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups:

1. Black American
2. Asian-Pacific American
3. Native American
4. Women

The form requires specific information regarding the consultant contract: Agency, Location, Project Descriptions, Federal Aid Project Number (assigned by Caltrans-Local Assistance), Proposal Date, Proposer's Name, and Contract Goal.

The form has a column for the Work Item Number (or Item No's) and Description or Services to be Subcontracted to UDBEs. The UDBE should provide a certification number to the Consultant. Notify the Consultant in writing with the date of the decertification if their status should change during the course of the contract. The form has a column for the Names of certified UDBEs to perform the work (must be certified on the date proposals are received and include UDBE address and phone number). Enter the UDBE prime consultant and subconsultant certification numbers. Prime consultants shall indicate all work to be performed by UDBEs including, if the prime consultant is a UDBE, work performed by its own forces.

There is a column for the total UDBE percentage. Enter the Total Claimed UDBE Participation percentage of items of work submitted with the proposal pursuant to the Special Provisions. (If 100% of item is not to be performed or furnished by the UDBE, describe exact portion of time to be performed or furnished by the UDBE.) See Notice to Bidders/Proposers Disadvantaged Business Enterprise Information to determine how to count the participation of UDBE firms. Note: If the proposer has not met the contract goal, the local agency must evaluate the proposer's good faith efforts to meet the goal in order to be considered for award of the contract.

Exhibit 10-O (1) must be signed and dated by the consultant proposing. Also list a phone number in the space provided and print the name of the person to contact.

**For the Success Proposer only, local agencies** should complete the Contract Award Date and Federal Share fields and verify that all information is complete and accurate before signing and sending a copy of the form to the District Local Assistance Engineer within 15 days of award. Failure to submit a completed and accurate form within the 15-day time period may result in the de-obligation of funds on this project.

**District DBE Coordinator** should verify that all information is complete and accurate. Once the information has been verified, the **District Local Assistance Engineer** signs and dates the form.

**APPENDIX E-4 - EXHIBIT 10-O2 LOCAL AGENCY PROPOSER DBE  
INFORMATION (CONSULTANT CONTRACTS)**

**NOTE: PLEASE REFER TO INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM**

AGENCY: \_\_\_\_\_ MTC \_\_\_\_\_ LOCATION: \_\_\_\_\_ 101 8<sup>th</sup> St., Oakland, CA 94607 \_\_\_\_\_

PROJECT DESCRIPTION: \_\_\_\_\_ AC Transit Financial Review \_\_\_\_\_

TOTAL CONTRACT AMOUNT: \$ \_\_\_\_\_

PROPOSAL DATE: \_\_\_\_\_

PROPOSER'S NAME: \_\_\_\_\_

CONTRACT ITEM NO.	DESCRIPTION OR SERVICES TO BE SUBCONTRACTED	DBE Cert. No. AND EXPIRATION DATE	NAME OF DBEs (Must be certified on the date bids are opened - include DBE address and phone number)	PERCENTAGE OF DBE

**For Local Agency to Complete:**

Local Agency Contract Number: \_\_\_\_\_

Federal Aid Project Number: \_\_\_\_\_

Federal Share: \_\_\_\_\_

Contract Award Date: \_\_\_\_\_

Local Agency certifies that the DBE certification(s) has been verified and all information is complete and accurate.

Print Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Local Agency Representative

(Area Code) Telephone Number: \_\_\_\_\_

Total Claimed  
Participation

\$ \_\_\_\_\_

%

Signature of Proposer

Date \_\_\_\_\_ (Area Code) Tel. No. \_\_\_\_\_

Person to Contact \_\_\_\_\_ (Please Type or Print)

**For Caltrans Review:**

Print Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Caltrans District Local Assistance Engineer

Local Agency Bidder - DBE Commitment(Rev 3/09)

Distribution: (1) Copy – Fax or scan a copy to the Caltrans District Local Assistance Engineer (DLAE) within 15 days of contract execution. Failure to send a copy to the DLAE within 15 days of contract execution may result in de-obligation of funds for this project.  
(2) Original – Local agency files

**INSTRUCTIONS - LOCAL AGENCY PROPOSER DBE INFORMATION  
(CONSULTANT CONTRACTS) (Revised 03/09)**

**SUCCESSFUL PROPOSER:**

The form requires specific information regarding the consultant contract: Agency, Location, Project Description, Federal Aid Project Number (assigned by Caltrans-Local Assistance), Proposal Date, and Successful Proposer's Name.

The form has a column for the Description or Services to be Subcontracted by DBEs. The DBE should provide a certification number to the prime consultant. The form has a column for the Names of DBE certified consultants to perform the work (must be certified on the date the proposal is received and include DBE address and phone number). Enter DBE prime consultant's and subconsultants' certification numbers. The prime consultant shall indicate all work to be performed by DBEs including, if the prime consultant is a DBE, work performed by its own forces.

Enter the Total Claimed DBE Participation percentage of items of work in the total DBE Dollar Amount column. (If 100% of item is not to be performed by the DBE, describe the exact portion of time to be performed by the DBE.) See Notice to Proposers/Bidders Disadvantaged Business Enterprise Information to determine how to count the participation of DBE firms.

Exhibit 10-O (2) must be signed and dated by the successful proposer at contract execution. Also list a phone number in the space provided and print the name of the person to contact.

**For the successful proposer, Local agencies** should complete the Contract Award Date and Federal Share fields and verify that all information is complete and accurate before signing and sending a copy of the form to the District Local Assistance Engineer within 15 days of contract execution. Failure to submit a completed and accurate form within the 15-day time period may result in the de-obligation of funds on this project.

**District DBE Coordinator** should verify that all information is complete and accurate. Once the information has been verified, the **District Local Assistance Engineer** signs and dates the form.

**APPENDIX E-5 - UDBE INFORMATION—GOOD FAITH EFFORTS**

Federal-aid Project No. \_\_\_\_\_ Bid Opening Date \_\_\_\_\_

MTC established an Under-utilized Disadvantaged Business Enterprise (UDBE) goal of 7% for this project. The information provided herein shows that a good faith effort was made.

Bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the “Local Agency Bidder – UDBE Commitment” form indicates that the bidder has met the UDBE goal. This will protect the bidder’s eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a UDBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the “Local Agency Bidder – UDBE Commitment” form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled “Submission of UDBE Commitment” of the Special Provisions:

- A. The names and dates of each publication in which a request for UDBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement

- B. The names and dates of written notices sent to certified UDBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the UDBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of UDBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates

C. The items of work which the bidder made available to UDBE firms, including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate UDBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate UDBE participation was made available to UDBE firms.

Items of Work	Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract

D. The names, addresses and phone numbers of rejected UDBE firms, the reasons for the bidder's rejection of the UDBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each UDBE if the selected firm is not a UDBE:


Names, addresses and phone numbers of rejected UDBEs and the reasons for the bidder's rejection of the UDBEs:


E. Efforts made to assist interested UDBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to UDBEs:


F. Efforts made to assist interested UDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the UDBE subcontractor purchases or leases from the prime contractor or its affiliate:

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G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using UDBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results

H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

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Name of Proposing Company	
Signature of Authorizing Official	
Date	